

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:21-cv-290**

MIRANDA HATHAWAY, by and through
biological mother, natural guardian, next
friend and guardian ad litem ANGELA
HATHAWAY, and on behalf of herself and
all others similarly situated,

Plaintiff,

v.

SMALLCAKES STEELE CREEK, LLC,
SMALLCAKES BALLANTYNE, LLC, IAN
BOWLEG and AYANNA BOWLEG,

Defendants.

**PLAINTIFF'S MOTION TO
CONDITIONALLY CERTIFY A
COLLECTIVE ACTION AND
FACILITATE NOTICE PURSUANT
TO 29 U.S.C. §216(b)**

Plaintiff Miranda Hathaway, by and through her biological mother, natural guardian, next friend, and guardian ad litem, Angela Hathaway, and on behalf of herself and all others similarly situated ("Plaintiff"), by counsel, submits her Motion to Conditionally Certify a Fair Labor Standards Act ("FLSA") Collective Action and Facilitate Notice Pursuant To 29 U.S.C. §216(b) and shows as follows:

1. Conditional certification of an FLSA collective action is appropriate because Plaintiff has set forth substantial allegations with documentary evidence to establish that Defendants regularly retained all credit card tips earned by Plaintiff and all others similarly situated ("Potential Plaintiffs"), in violation of the FLSA and federal regulations.

2. The FLSA's "collective action" provision allows for an individual employee(s) to bring an action on her own behalf and on behalf of those similarly situated as provided in 29 U.S.C. §216(b).

3. Plaintiff seeks conditional certification of this collective action and authorization to send initial and subsequent Court-supervised Notices to all current and former non-exempt hourly employees who are or were employed by Smallcakes Steele Creek, LLC, Smallcakes Ballantyne, LLC, Ian Bowleg and/or Ayanna Bowleg beginning June 16, 2018 to the present. In the alternative, Plaintiff seeks facilitation of said Notice.

4. Plaintiff requests that the Court approve their proposed Notice of Collective Action Lawsuit (“Notice”) and the corresponding Consent to Become Party Plaintiff form (“Consent”), attached as Exhibits 1 and 2 to this Motion.

5. Plaintiff further moves the Court to grant the following relief:

- a. Order Defendants to produce to Plaintiff’s counsel, within seven (7) days, a computer-readable data file containing the names, addresses, email addresses, telephone numbers, dates of employment, social security numbers and dates of birth for all Potential Plaintiffs;
- b. Order court-facilitated notice of this collective action to the Potential Plaintiffs in the form attached as Exhibit 1 to this Motion and the Consent to Join form attached as Exhibit 2 to this Motion;
- c. Authorize Plaintiff to send the Notice and Consent, at their expense, by First-Class U.S. Mail and email to all Potential Plaintiffs to inform them of their right to opt-in to this lawsuit, together with a postage-paid return envelope addressed to Plaintiff’s counsel;
- d. Authorize a ninety (90) day opt-in period for Potential Plaintiffs to opt-in; and
- e. Order the posting of the Notice at Defendants’ facilities in locations where currently employed Potential Plaintiffs are likely to view it.

6. Plaintiff requests that the “opt-in period” commence seven (7) days after Defendants produce the requested document containing information pertaining to Potential Plaintiff, so as to provide Plaintiff’s counsel with adequate time to prepare and send the Court’s approved Notice.

WHEREFORE Plaintiff Miranda Hathaway by and through her biological mother, natural guardian, next friend, and guardian ad litem, Angela Hathaway, and on behalf of herself and all others similarly situated, by counsel, respectfully requests that the Court grant her Motion to Conditionally Certify a Collective Action and Facilitate Notice Pursuant to 29 U.S.C. §216(b).

Respectfully submitted on this 17th day of August 2021.

/s/ L. Michelle Gessner
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